IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL REVISION APPLICATION NO. 134 OF 2004

IBP CO. LTD. ... APPLICANTS

Versus

TALERA CARS PVT. LTD. .. RESPONDENTS

Mr. Rahul Narvekar i/b M/s Udwadia &
Udeshi for applicants

Mr.Madhav Jamdar for respondents

CORAM:-SMT. RANJANA DESAI, J.

DATED:-15-2-2005

P.C.

In this civil revision application order dated 5th July, 2004 passed by the 3rd Addl. S.C. Judge, Pune in Civil Suit No. 545 of 2003 pending on the file of Small Causes Court at Pune is challenged. By the impugned order, the learned Judge has rejected the prayer made by the petitioners to condone the delay in filing written statement.

2. I have heard the learned counsel appearing for the petitioner. He placed reliance on a Division Bench judgment of this court in **Chintaman Sukhdeo Kaklu & Ors. v. Shivaji Bhausaheb Gadhe & Ors., 2004(4) Mh. L. J. 739** and contended that the time limit prescribed under Order VIII Rule 1 of the Code of Civil Procedure for filing written statement cannot be construed as mandatory. In extraordinary and in exceptional circumstances the court has discretion to permit the defendant to file written statement beyond the period of 90 days. There can be no dispute about this proposition. However, in the application referred by the petitioner in the trial court absolutely no explanation is given as to why the written statement was not filed within time. The learned counsel for the petitioners tried to give some explanation. He submitted that the writ of summons was served on 15/12/2003 and papers were sent by the petitioners to his lawyer on 16/12/2003 and the petitioners' lawyer asked for a copy of the lease deed. It took time for the petitioner to get the lease deed. In the application in the trial court there is no whisper about this. Hence the application has been rightly rejected as no exceptional circumstances are made out.

3. No interference is called for. Civil revision application is rejected.

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